Supreme Court, U.S.
FILED
OCT 16 1985
JOSEPH F. SPANIOL, JR.
CLERK

85-607
No.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

MAURA BURCHE, Petitioner,

vs.

CATERPILLAR TRACTOR CO., Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
RESPONDENT'S MOTION TO STRIKE
PURPORTED REVISION OF PETITION

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Attorneys for Respondent

BEST AVAILABLE COPY

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MOTION TO STRIKE

COMES NOW, CATERPILLAR TRACTOR CO. ("CATERPILLAR"), Respondent in the above-referenced cause, through Thomas G. Harvel of Westervelt, Johnson, Nicoll & Keller, one of its attorneys, and pursuant to Rule 42 and Rule 39 of Rules of the Supreme Court of the United States moves to strike the document designated but not labeled as a "Revised Petition" and mailed to CATERPILLAR's attorney of record on

or after October 1, 1985, and for a basis for this Motion, CATERPILLAR states as follows:

1. That by Order dated July 25, 1985, Hon. Justice Stevens extended until September 22, 1985, the date by which Petitioner was permitted to file her Petition for Writ of Certiorari.

2. That on September 13, 1985, counsel for CATERPILLAR received a document which, although in improper form and improper content, appears to stand as Petitioner's Petition for Writ of Certiorari; CATERPILLAR has at least treated it as such and has initiated a Brief in Opposition thereto causing the same to have been printed and subsequently mailed (filed) on October 10, 1985.

3. That Petitioner's undated document allegedly mailed on October 1, 1985, and assertedly "revising" the prior "Petition" was received by CATERPILLAR's counsel on October 8, 1985, after CATERPILLAR's Brief In Opposition

to the original document had been submitted to the printer.

4. That no authority exists for the purported revision of Petitioner's "Petition" and no authority exists for any filing of any matter whatsoever after September 22, 1985, by Petitioner, without the express direction of this Honorable Court.

5. That manifest injustice and hardship to Caterpillar would arise were the "revision" to be permitted in that Caterpillar would not be able to timely respond to the same.

WHEREFORE, Caterpillar moves the Court to enter an Order striking the purported "revised" but undated matter filed by Petitioner purportedly on or after October 1, 1985.

CATERPILLAR TRACTOR CO.,
Respondent

WESTERVELT, JOHNSON, NICOLL & KELLER

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Certificate of Service

The undersigned, Thomas G. Harvel, of Westervelt, Johnson, Nicoll & Keller, a member of the Bar of this Honorable Court, hereby certifies that the original and forty (40) copies of the foregoing Motion To Strike, and three (3) copies thereof were served upon the entity or party below listed by the type of mail specified by enclosing the same in an envelope with postage fully prepaid and depositing the same with the United States Postal Service on the 11th day of October, A.D. 1985, to wit:

Maura Burche (3) (Regular Mail)
5210 Division Street
Davenport, Iowa 52806

Clerk of Court (40) (Certified Mail)
Supreme Court of the United States
Washington, D.C. 20543

Thomas G. Harvel